

P BK 92 PG 354

S.M.

RECEIVED
DEC 21 2000
USRP

Wells FARGO BANK MINNESOTA, N.A.
AS INDENTURE TRUSTEE (Lender)

- and -

SUMEX MID-SOUTH INC
(Tenant)

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

Dated: December 18, 2000

Location: 12605
185 GOODMAN ROAD
SOUTHAVEN, MS

County: DE SOTO

PREPARED BY AND UPON
RECORDATION RETURN TO:

Messrs. Thacher Proffitt & Wood
Two World Trade Center
New York, New York 10048
Attention: Donald F. Simone, Esq.
972-789-8400
File No.: 17557-00061

STATE MS - DESOTO CO.
FILED

DEC 20 4 10 PM '01

BK 92 PG 354
W.E. DAVIS CH. CLK.

After Recording, Return To:
Holcomb Dunbar, P.A.
P.O. Box 190
Southaven, MS 38671
601.349.0664
File No. 90-224 Initials SDH

12605

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 18th day of December, 2000 by and between the lender described on Exhibit B attached hereto ("Lender") and SUMEX MID-SOUTH INC, a Tennessee Corporation, having an address at 2174 FREEMONT AVENUE, MEMPHIS, TN ("Tenant").

RECITALS:

A. Lender is the present owner and holder of a certain mortgage, deed of trust, deed to secure debt or similar security instrument (together with any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements thereof, the "Security Instrument") dated JANUARY 9, 2001, given by Landlord (defined below) to Lender which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property") and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by a certain promissory note dated January 9, 2001, given by Landlord to Lender (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "Note");

B. Tenant is the holder of a leasehold estate in a portion of the Property under and pursuant to the provisions of a certain lease dated 11/16/1998 between USRP OPERATING LP, as landlord ("Old Landlord"), and Tenant, as tenant, as amended ~~by that certain agreement dated _____, 2000 which~~, subject to the terms and conditions of the Lease, has been transferred from Old Landlord to USRP FUNDING 2001-A, L.P. (the "Landlord") (such lease, as modified and amended as set forth herein being hereinafter referred to as the "Lease"); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Tenant and Lender agree as follows:

1. SUBORDINATION. The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the lien thereof, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. NON-DISTURBANCE. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the Lease shall be in full force and effect and (b) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

3. ATTORNNMENT. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "Purchaser"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (a) liable for the failure of any prior landlord (any such prior landlord, including Old Landlord and Landlord, being hereinafter referred to as a "Prior Landlord") to perform any obligations of Prior Landlord under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property, (b) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property, (c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser, (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser or (e) bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest. In the event that any liability of Purchaser does arise pursuant to this Agreement or the Lease, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest.

4. NOTICE TO TENANT. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and

hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. NOTICE TO LENDER AND RIGHT TO CURE. Tenant shall notify Lender of any default by Landlord under the Lease and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default. Notwithstanding the foregoing, Lender shall have no obligation to cure any such default.

6. NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant:

SUMeX Mid-South, Inc.
2174 Freemont Avenue
Memphis, TN 38114
Attention: Wayne Brown
Facsimile No. 901/743-9736

If to Lender:

Wells FARGO BANK MINNESOTA, N.A.
1031 10th AVENUE, S.E.
MINNEAPOLIS, MN 55414
Attention: ROSE BUCHANAN
Facsimile No. (612) 667-5950
PHONE

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 6, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

7. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

8. GOVERNING LAW. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

9. MISCELLANEOUS. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER SIGNATURE SET FORTH ON FOLLOWING PAGE

TENANT:

SUMeX Mid-South, Inc. _____, a
(printed name)
Tennessee Corporation
(state of formation) (form of entity)

By: W. Wayne Brown
Name: W. Wayne Brown
Title: President

The undersigned accepts and agrees to the provisions of Section 4 hereof:

LANDLORD:

USRP FUNDING 2001-A, L.P., a
Delaware limited partnership

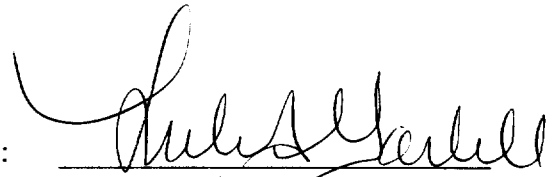
By: USRP (SFGP), LLC, sole general partner and
a Delaware limited liability company

By: Barbara A. Erhart
Name: Barbara A. Erhart
Title: Manager

LENDER:

WELLS FARGO BANK MINNESOTA, N.A.,
a national banking association, as Indenture
Trustee

By:

A handwritten signature in black ink, appearing to read "Leslie A. Gaskill", written over a horizontal line.

Name: Leslie A. Gaskill

Title: Vice President

ACKNOWLEDGMENTS

P. BK 92 PG 361

(TENANT)

STATE OF Tennessee §
COUNTY OF Shelby §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared V. Wayne Brown, the President of SUMeX Mid-South, Inc. (tenant), a TN (state of organization) Corporation (form of entity), known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration herein expressed, in the capacity therein stated, and as the act and deed of said person and entity.

GIVEN UNDER MY HAND AND SEAL this 18th day of December, 2000.

(SEAL)

N. S. Holley
Printed Name: N. S. Holley
Notary Public State of Tennessee
Commission Expires 4-30-01

(LANDLORD)

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Barbara A. Erhart, a Manager of USRP (SFGP), LLC, a Delaware limited liability company, the sole general partner of USRP FUNDING 2001-A, L.P., a Delaware limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed, in the capacity therein stated, and as the act and deed of said person and limited partnership.

GIVEN UNDER MY HAND AND SEAL this 12th day of December, 2000.

(SEAL)



Jennifer Hicks
Printed Name: Jennifer Hicks
Notary Public State of Texas
Commission Expires: January 28, 2001

ACKNOWLEDGMENT

(Lender)

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STATE OF NEW YORK

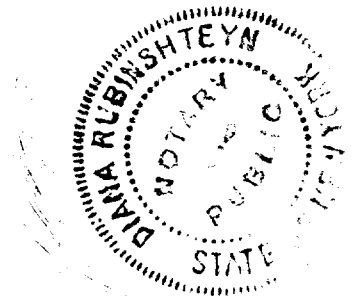
COUNTY OF NEW YORK

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Leslie A. Gaskill, the Vice President of WELLS FARGO BANK MINNESOTA, N.A., a national banking association, as Indenture Trustee, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed, in the capacity therein stated, and as the act and deed of said person and entity.

GIVEN UNDER MY HAND AND SEAL this 7th day of February, 2001.

By: *Diana Rubinshteyn*
Notary Public State of New York

DIANA RUBINSHTEYN
NOTARY PUBLIC, State of New York
No. 01RU6052669
Qualified in Kings County
Commission Expires December 26, 2002



TPW # 270 SITE # 12605
185 Goodman Rd
DeSoto County
MS

EXHIBIT A
(Legal Description)

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Lot 10, Second Addition, South Lake Commercial Subdivision in Section 36, Township 1 South, Range 8 West, City of Southaven, DeSoto County, Mississippi, as shown by the plat appearing of record in Plat Book 61, Page 19, in the office of the Chancery Clerk of DeSoto County, Mississippi.

EXHIBIT B

(LENDER)

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WELLS FARGO BANK MINNESOTA, N.A., AS INDENTURE TRUSTEE, a national banking association, having an address at 11000 Broken Land Parkway, Columbia, Maryland 21044-3542, as beneficiary, for the benefit of the noteholders pursuant to that certain Indenture dated as of January 9, 2001 between Borrower and Lender.